IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14548 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION LTD. THR' ITS - Petitioner(s)

Versus

RAMESH RASIKLAL JANI - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner State Road Transport Corporation has challenged the legality of an Award dated 19.06.2004 by which the Labour Court was pleased to allow the reference of the

respondent workman partially. His dismissal dated 25.08.1994 was set aside. He was directed to be reinstated in service with 60% back wages.

2. The respondent workman, who was engaged as a driver, was charge-sheeted for an accident which was caused between night of 27th May 1990 and morning of 28th May 1990. The bus, which the respondent was driving, went on the roadside into a 15 feet deep ditch. The door of the bus opened on account of impact of the accident and one passenger got crushed under the bus and died. Upon conclusion of the inquiry, the petitioner dismissed the respondent from service by an order dated 25.08.1994. The respondent challenged his dismissal before the Labour Court. While allowing the reference, the Labour Court observed that the conclusions against the workman are baseless. The Labour Court therefore found that the dismissal order is illegal. Considering that the workman was earning Rs. 40/- per day, the Labour Court provided for 60% of backwages instead of 100% backwages.

3.The conclusion of the Labour Court are not sustainable. It is not in dispute that the bus, which the respondent was driving met with a serious accident on a plain road suddenly when the bus went on the roadside and fell into a ditch about 15 feet deep. Due to the impact of the accident, the door of the bus opened accidentally and a passenger died. It is also recorded that the conductor also required medical attention and his statement therefore could not be recorded. In this factual background, it was not open for the Labour Court to overrule the findings arrived at by the employer during the course of inquiry. Negligence of the respondent is writ large on the face of the record. No explanation was put forth by the workman, which would be plausible and which would explain the causing of the accident. In the decision of the Hon'ble Supreme Court in the case of **Cholan Roadways Ltd. Vs. G. Thirugnanasambandam reported in 2005 (1) AIR SCW 84**, the Hon'ble Supreme Court observed that the Tribunal failed to apply the correct standard of proof in relation to a domestic inquiry, where “preponderance of probability”

should be applied. It was further observed that the principles of Evidence Act have no application in the domestic inquiry. It was observed that the Tribunal committed an error by not applying the principles of r*es ipsa loquitur,* which was relevant for the purpose of this case and thus, failed to take into consideration a relevant factor and took into consideration an irrelevant factor not germane for determining the issue viz. the passengers of the bus were mandatorily required to be examined.

3.1In the present case also, the main defence of the workman that the negligence on his part was not proved, ought to have been rejected by the Labour Court. As noted earlier, a serious accident was caused in the bus, driven by the respondent. No explanation came forth from the driver. Principles of r*es ipsa loquitur* would therefore squarely apply. The Labour Court erred in interfering with the Order of dismissal solely on the ground that the charges are not proved. A human life was lost and the Corporation was made to pay substantial

amount towards Motor Accident Claim. The respondent could not have been allowed to go scot free without any punishment.

4. It is jointly stated that pursuant to the Award passed by the Labour Court, respondent is already reinstated in service. Considering the fact that the dismissal order was passed in the year 1994 and the workman was reinstated some time in the year 2004, while setting aside the Award passed by the Labour Court, denying the workman full backwages for the entire period would be an appropriate punishment.

5. In the result, though the reinstatement of the workman is not disturbed, directions for payment of backwages are set aside.

6. Rule made absolute to the above extent. No orders as to costs.

(Akil Kureshi, J.)

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